



U.S. Citizenship  
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FILE:

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Office: VERMONT SERVICE CENTER

Date: NOV 06 2007

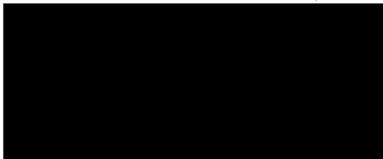
IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, initially approved the employment based preference visa petition on December 16, 2004. Subsequently, the director issued a notice of intent to revoke the approval of the petition (NOIR) on November 2, 2005. In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140) on May 31, 2006. The matter is now before the Administrative Appeals Office (AAO) on appeal.<sup>1</sup> The appeal will be rejected.

Section 205 of the Act, 8 U.S.C. § 1155, provides that “[t]he Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

*In Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)). Finally, the realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Id.*

The nature of the petitioner's business is a Jireab Restaurant. It seeks to employ the beneficiary permanently in the United States as a cook-Korean specialty. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the U.S. Department of Labor. The director determined that the petitioner had failed to establish that it and the [REDACTED] Restaurant were one and the same business. The director revoked the approval of the petition accordingly.

On May 31, 2006, the director revoked the approval of the petition citing specifically that the response to the petitioner for additional evidence as requested in the NOIR was insufficient to demonstrate that the petitioner and the [REDACTED] Restaurant were one and the same business.

The petitioner filed an appeal on June 29, 2006, 30 days after the decision was rendered. According to the pertinent regulations, the appeal was not timely filed. The regulation at 8 C.F.R. § 205.2(d) states that revocations of approvals must be appealed within 15 days after service of the notice of revocation. If the decision was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b). The notice of revocation erroneously stated that the petitioner could file an appeal within 30 days (33 if mailed).

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<sup>1</sup> A chronological summary of the progression of this case is as follows: the I-140 petition was filed on January 2, 2002; the petition was approved on December 16, 2004; the director issued a notice of intent to revoke the approval of the petition (NOIR) in November 2, 2005. On May 31, 2006, in a Notice of Revocation (NOR), the acting director revoked approval of the petition; and, on June 29, 2006, the petitioner untimely appealed the director's decision.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 18-day time limit for filing an appeal. The appeal will be rejected as untimely filed. The AAO will return the matter to the director for consideration as a motion to reopen.

Nevertheless, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the untimely appeal meets the requirements of a motion to reopen. Counsel has submitted additional evidence and he requests that evidence already submitted in this matter be reconsidered.

Counsel submitted upon an appeal five printed web pages from the Internet site <http://www.roinsoft.com> relating to trade names, two printed web pages from the Internet site <http://lis.njleg.state.nj.us> relating to the New Jersey State Code regulation on the use of corporate alternate names, one page from an un-named publication on trade names, the certificate of incorporation of Shinsajung U.S.A. Inc., a State of New Jersey Registration of Alternate Name dated November 21, 2005, a menu entitled Shin Sa Jung U.S.A. as well as other documentation.

The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the director must consider the untimely appeal as a motion to reopen and render a new decision accordingly.

**ORDER:** The appeal is rejected. The matter is returned to the director for consideration as a motion to reopen.